



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 7, 2003

Ms. Chris G. Elizalde  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P. O. Box 2156  
Austin, Texas 78768

OR2003-0835

Dear Ms. Elizalde:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176362.

The Gonzales Independent School District (the "district"), which you represent, received a request for four categories of information pertaining to a specified person and the suspension of the requestor's client from school and placement in AEP/SAFE. You state that you are in the process of providing the requestor with some responsive information. You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with section 21.355 of the Education Code.<sup>1</sup> Section 21.355 provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. *See* Open Records Decision No. 643 (1996). In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *See id.* After carefully reviewing your representations and the documents at issue, we do not agree that these documents evaluate the performance of a teacher in

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

accordance with chapter 21 of the Education Code. Accordingly, we conclude that the district may not withhold this information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Consequently, the district must release the entirety of the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald J. Bounds". The signature is fluid and cursive, with the first name "Ronald" being more prominent.

Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 176362

Enc. Submitted documents

c: Mr. Bob D. Brown  
Brown & Martinez, L.L.P.  
1208 South Moody  
Victoria, Texas 77901  
(w/o enclosures)